

M Civ JI 190.02 Form of Verdict: Dram Shop—Sale to Visibly Intoxicated Person

We, the jury, answer the questions submitted as follows:

QUESTION NO. 1: Was the plaintiff [injured / damaged] by *[name of visibly intoxicated person]*?

Answer: ____ (yes or no)

If your answer is “no,” do not answer any further questions.

If your answer is “yes,” go on to Question No. 2.

QUESTION NO. 2: Did *[name of defendant / name of agent / name of employee]* [sell / give / furnish] alcoholic liquor to *[name of alleged visibly intoxicated person]* at a time when [he / she] was visibly intoxicated?

Answer: ____ (yes or no)

If your answer is “no,” do not answer any further questions.

If your answer is “yes,” go on to Question No. 3.

QUESTION NO. 3: Was the [selling / giving / furnishing] of alcoholic liquor a proximate cause of plaintiff’s [injuries / damages]?

Answer: ____ (yes or no)

If your answer is “no,” do not answer any further questions.

If your answer is “yes,” go on to Question No. 4.

QUESTION NO. 4: Did plaintiff actively contribute to the intoxication of *[name of visibly intoxicated person]*?

Answer: ____ (yes or no)

If your answer is “no,” go on to Question No. 5.

**NOTE: If you decided that more than one of the parties was at fault and their fault caused or contributed to the plaintiff's [injury / damage], then answer Question No. 5.*

Answer: **Defendant** *[Name of visibly intoxicated person]* ____ percent

Defendant *[Name of licensee]* ____ percent

Plaintiff *[Name of plaintiff]* ____ percent

TOTAL	100 percent
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Answer: \$_____.

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\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

QUESTION NO. 8: If you find that the plaintiff will sustain damages for [lost wages or earnings / or / lost earning capacity / and / *[Describe other economic loss claimed by the plaintiff.]*] in the future, give the total amount for each year in which the plaintiff will sustain damages.

Answer:

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

NONECONOMIC DAMAGES

*****NOTE: If you determined in Question No. 5 that the plaintiff was more than 50 percent at fault, then do not answer any further questions. If you determined in Question No. 5 that the plaintiff was 50 percent or less at fault, then go on to Question No. 9.***

QUESTION NO. 9: If you find that the plaintiff has sustained damages for *[Describe past noneconomic damages claimed by the plaintiff such as M Civ JI 50.02 Pain and Suffering, Etc., M Civ JI 50.03 Disability and Disfigurement, and M Civ JI 50.04 Aggravation of Preexisting Ailment or Condition.]*, give the total amount of damages to the present date.

Answer: \$_____.____

QUESTION NO. 10: If you find that the plaintiff will sustain damages for *[Describe future noneconomic damages claimed by the plaintiff.]* in the future, give the total amount for each year in which the plaintiff will sustain damages.

Answer:

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for *[year]*

\$_____.____ for [year]

\$_____.____ for [year]

\$_____.____ for [year]

Signed,

Foreperson

Date

Note on Use

*Question No. 5 may have to be modified if fault of a named nonparty is an issue in the case. [MCL 600.6304](#). [MCL 600.6304](#), requiring an allocation of fault, was adopted by 1986 PA 178 and made applicable to personal injury actions arising on or after October 1, 1986. 1986 PA 178, §2. It was amended by 1995 PA 248 to apply also to property damage actions and to require allocation of fault between certain named nonparties as well as parties. The 1995 amendments apply to cases filed on or after March 28, 1996. 1995 PA 248, §3.

**This note should not be read to the jury if the case was filed before March 28, 1996. 1995 PA 161, §3. The prohibition against noneconomic damages if the plaintiff is over 50 percent at fault applicable to all actions based on tort or other legal theory seeking damages for personal injury, property damage, or wrongful death is found in [MCL 600.2959](#), added by 1995 PA 161.

Where there are multiple plaintiffs or defendants, the appropriate questions should be asked separately as to each one.

A separate Special Verdict sheet should be furnished to the jury for each plaintiff and each defendant.

Omit any questions that are not an issue.

This verdict form should not be used if the plaintiff is over 60 years of age. *See* [MCL 600.6311](#)

This form of verdict is appropriate in a case in which the evidence would allow an award of damages for a 20-year period in the future. The form must be modified by the court to add or delete lines in Questions No. 7, 8, and 10 in cases where the evidence supports an award of damages for a period longer or shorter than 20 years.

The jury should be instructed to complete the verdict form for the plaintiff's case against the defendant alleged visibly intoxicated person first because if the jury finds in favor of that defendant on any of the complete defenses, the licensee defendant has the benefit of those

defenses and the jury will not have to complete this verdict form. For a discussion of defenses, see the Comment.

Comment

Actions against retail licensees are subject to the revised judicature act ([MCL 436.1801\(11\)](#)) including the section requiring specific findings as to types of damages ([MCL 600.6305](#)) and the section requiring an allocation of fault among parties and named nonparties ([MCL 600.6304](#)). *See also Weiss v Hodge*, 223 Mich App 620; 567 NW2d 468 (1997), *lv den*, 457 Mich 886; 586 NW2d 231 (1998); *Brown v Swartz Creek Memorial Post 3720—Veterans of Foreign Wars, Inc*, 214 Mich App 15; 542 NW2d 588 (1995) (allocation of fault provision applicable to all parties including licensee). See also the prohibition against noneconomic damages if the plaintiff is over 50 percent at fault, [MCL 600.2959](#), added by 1995 PA 161.

All defenses of the minor or alleged visibly intoxicated person are available to the licensee. [MCL 436.1801\(7\)](#). Plaintiff's comparative negligence is a defense available to the licensee. *Lyman v Bavar Co*, 136 Mich App 407; 356 NW2d 28 (1984). A 1986 amendment to [MCL 436.1801\(7\)](#) deleted the word "factual" from "all defenses." The most probable and significant impact of the change was to allow the licensee to assert the no-fault threshold defenses so, if the cause of action against the alleged visibly intoxicated person or minor is a no-fault action and the jury finds that the injury does not meet the statutory threshold, then a verdict may not be returned against the dram shop defendant.

History

M Civ JI 190.02 was added May 1988.
Amended November 1989, January 2001.